

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

BRANCH BANKING AND TRUST COMPANY,
a North Carolina corporation,

Plaintiff,

v.

Civil Action No. 2:19-cv-00366

SERVISFIRST BANK;
MBH HIGHLAND, LLC d/b/a
HIGHLAND HOSPITAL;
WORLD GLOBAL CAPITAL, LLC d/b/a
FUNDKITE FUNDING;
GREEN CAPITAL FUNDING, LLC; and
MCA RECOVERY LLC,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is a motion to stay discovery, filed June 20, 2019 by defendants World Global Capital, LLC, Green Capital Funding, LLC, and MCA Recovery, LLC (collectively the "New York Defendants").

I.

Plaintiff Branch Banking and Trust Company ("BB&T") instituted this interpleader action in the Circuit Court of Kanawha County, West Virginia on April 5, 2019. The underlying dispute revolves around competing claims to certain deposit accounts opened and maintained by defendant MBH Highland Hospital,

LLC ("Highland Hospital") at BB&T, with which Highland Hospital maintains its account at the BB&T branch located at 300 Summers Street, Charleston, West Virginia. Compl. ¶¶ 9, 15-17, ECF No. 1-1. As a disinterested stakeholder, BB&T asserts no claim to the money in Highland Hospital's deposit accounts. Id. ¶ 22. Rather, BB&T seeks a court's determination of the proper distribution of the funds in these accounts among the conflicting claims of the defendants. Id. ¶¶ 15, 20.¹

The interpleader complaint alleges that Highland Hospital's ultimate parent company is nonparty Meridian Behavioral Health Systems, LLC ("MBHS"), whose sole member is a nonparty individual, Wesley E. Mason III ("Mason"). Compl. ¶ 2, ECF No. 1-1. In February 2019, defendants World Global Capital, LLC ("WGC") and Green Capital Funding, LLC, ("GCF") were each awarded a judgment in the Supreme Court of the State of New York against Mason and MBHS and its affiliates, including Highland Hospital. Id. ¶¶ 10-11.² On February 27, 2019 and March 1, 2019, BB&T received two Information Subpoenas with Restraining Notices in

¹ When BB&T filed its interpleader complaint on April 5, 2019, Highland Hospital's deposit accounts held \$411,381.37 in total. As of July 25, 2019, the total amount held increased to \$434,199.41. See BB&T's Reply Supp. Mot. Leave Deposit Interpleader Funds 3 n.2, ECF No. 57.

² After the New York courts entered their judgments, Green Capital and World Global employed MCA Recovery as their collection agent. See New York Defs.' Mem. Supp. Mot. Dismiss Interpleader Compl. 1 n.1, ECF No. 9.

connection with the two New York judgments stating that \$305,466.91 (WGC) and \$834,001.00 (GCF), respectively, remained due on the judgments plus interest. Id. ¶¶ 12-13. On March 1, 2019, BB&T also received a levy and demand on Highland Hospital's deposit accounts, directing BB&T to remit the sum of \$876,113.65 to GCF. Id. ¶ 14. The interpleader complaint further alleges that "BB&T has been notified" by unidentified sources that the funds requested may not properly belong to WGC or GCF and that ServisFirst Bank ("ServisFirst") "may hold a first priority perfected security interest in all assets of MBHS and its affiliates, including Highland Hospital, and has filed UCC financing statements regarding the same." Id. ¶ 15.

BB&T has named all of the above-named entities as defendants in this action. Both Highland Hospital and ServisFirst asserted crossclaims against the New York Defendants in the state court action³ seeking, inter alia, an order that Highland Hospital possesses a valid claim to the deposit funds, subject to

³ Highland Hospital originally filed its answer and crossclaims on April 16, 2019. See Highland Hospital's Answer, ECF No. 3. ServisFirst contends that it filed its answer and crossclaims in the state court action on May 8, 2019, the same day that the New York Defendants filed a notice of removal in this court. See ServisFirst's Answer 1 n.1, ECF No. 18. The New York Defendants maintain that they were never served with ServisFirst's answer and crossclaims until they were filed in this court June 7, 2019. See New York Defendant's Mot. Stay 1 n.1, ECF No. 23.

ServisFirst's perfected security interest. See ServisFirst's Answer, ECF No. 18; Highland Hospital's Answer, ECF No. 3.

On May 8, 2019, the New York Defendants removed the interpleader action to this court. On May 30, 2019, the New York Defendants filed (1) a motion to dismiss Highland Hospital's crossclaims for lack of personal jurisdiction and lack of subject matter jurisdiction, or, in the alternative, transfer of venue to the Western District of New York; and (2) a motion to dismiss BB&T's interpleader complaint for lack of personal jurisdiction, or, in the alternative, transfer venue to the Western District of New York. On June 7, 2019, Highland Hospital moved to remand the case to state court because the New York Defendants failed to obtain the consent of either Highland Hospital or ServisFirst before removal. On June 20, 2019, the New York Defendants filed (1) a motion to stay discovery pending a decision on the above jurisdictional motions, and (2) a motion to realign ServisFirst and Highland Hospital as plaintiffs prior to any determination on whether removal was proper.

The parties have filed several additional motions since then: (1) the New York Defendants filed a motion on June 28, 2019 to dismiss ServisFirst's crossclaims for lack of subject matter jurisdiction and for failure to state a claim, or, in the alternative, transfer venue to the Western District of New York;

(2) BB&T filed a motion on July 12, 2019 to deposit the interpleader funds with the court; and (3) BB&T filed a motion on July 26, 2019 requesting leave to file an amended complaint. In total, there are eight pending motions in this case.

II.

Federal Rule of Civil Procedure 26(c) provides pertinently as follows:

A party or any person from whom discovery is sought may move for a protective order The court may, for good cause, issue an order to protect a party or person from . . . undue burden or expense, including one or more of the following: (A) forbidding the disclosure or discovery; (B) specifying terms, including time and place . . . for the disclosure or discovery

Fed. R. Civ. P. 26(c).

The Rule vests the court with discretion to stay discovery in advance of deciding a pending dispositive motion. See Thigpen v. United States, 800 F.2d 393, 396-97 (4th Cir. 1986) overruled on other grounds, Sheridan v. United States, 487 U.S. 392 (1988) ("Nor did the court err by granting the government's motion under Fed. R. Civ. P. 26(c) to stay discovery pending disposition of the 12(b)(1) motion. . . . Trial courts . . . are given wide discretion to control this discovery process").

As noted by one court, "such a procedure is an eminently logical means to prevent wasting the time and effort of all

concerned, and to make the most efficient use of judicial resources." Coastal States Gas Corp. v. Department of Energy, 84 F.R.D. 278, 282 (D.C. Del. 1979). The decision concerning a stay request is guided by a number of factors as follows:

In considering whether a stay of all discovery pending the outcome of a dispositive motion is warranted, a case-by-case analysis is required, since such an inquiry is necessarily fact-specific and depends on the particular circumstances and posture of each case. To assist in this determination, the Court is guided by the following factors, none of which is singly dispositive: [1] the type of motion and whether it is a challenge as a "matter of law" or to the "sufficiency" of the allegations; [2] the nature and complexity of the action; [3] whether counterclaims and/or cross-claims have been interposed; [4] whether some or all of the defendants join in the request for a stay; [5] the posture or stage of the litigation; [6] the expected extent of discovery in light of the number of parties and complexity of the issues in the case; and [7] any other relevant circumstances.

Bragg v. United States, No. CIV.A. 2:10-0683, 2010 WL 3835080, at *1 (S.D.W. Va. Sept. 29, 2010) (quoting Hachette Distribution, Inc. v. Hudson County News Co., Inc., 136 F.R.D. 356, 358 (E.D.N.Y. 1991)).

At the time the motion to stay was filed, Highland Hospital had filed a motion to remand and the New York Defendants had filed motions to dismiss for lack of personal and subject matter jurisdiction and to transfer venue. The issues raised by these motions are purely questions of law and do not depend on any facts in discovery. Though the New York Defendants' motion to

dismiss or alternatively transfer venue of ServisFirst's crossclaims also argues that ServisFirst failed to state a claim upon which relief could be granted pursuant to Rule 12(b)(6), this is a secondary argument raised in a motion filed June 28, 2019, after the motion to stay.

ServisFirst, Highland Hospital, and the New York Defendants all contend that this court lacks jurisdiction to hear this case. While Highland Hospital argues that any discovery could be reused in state court, a discovery plan in conformity with the Federal Rules and Local Rules of this court would be obviated if the court were to remand this case to state court. See Highland Hospital's Resp. Opp. Mot. Stay 7-8, ECF No. 36.

Regarding the remaining factors, this action appears to be one of some complexity given the scope and number of crossclaims asserted by ServisFirst and Highland Hospital, which include violations of the Uniform Enforcement of Foreign Judgments Act, the Business Registration Tax Act, and the Collection Agency Act of 1973. The court notes that the cross-claimants also vigorously oppose the stay. ServisFirst argues that it has a compelling interest in restoring its collateral "as well as in defeating any future claims of the New York Defendants to any further funds subject to this interpleader action." See ServisFirst's Resp. Opp. Mot. Stay 3, ECF No. 35. Likewise,

Highland Hospital argues a stay may jeopardize its ability to operate and provide necessary mental health treatment inasmuch as it is currently restricted from using the funds in the deposit accounts. See Highland Hospital's Resp. Opp. Mot. Stay 13-14, ECF No. 36. BB&T does not oppose the stay if the court finds jurisdiction proper in this case. See BB&T's Resp. Mot. Realign Parties and Mot. Stay 2, ECF No. 45.


Although the discovery completion date is November 22, 2019, discovery does not appear to have progressed beyond the defendants' first set of interrogatories, requests for production, requests for admissions, and expert witness disclosures. The New York Defendants also contend that discovery will be extensive, costly, and burdensome to determine the nature and extent of ServisFirst's interest.

After reviewing the applicable factors, the court finds that a stay is warranted in this case. An initial ruling on the numerous pending motions will resolve the preliminary jurisdictional disputes and avoid any unnecessary discovery in this court. Moreover, the stay was requested a little more than a month after the notice of removal and before the parties made any discovery requests. If ServisFirst and Highland Hospital are ultimately entitled to relief, a stay will likely only delay any recovery they receive in this case by a few months.

Accordingly, it is hereby ORDERED that the New York Defendants' motion to stay discovery be, and it hereby is, granted. It is further ORDERED that discovery in this matter be, and it hereby is, stayed until further order of the court.

The Clerk is directed to transmit copies of this order to all counsel of record and any unrepresented parties.

DATED: November 1, 2019



John T. Copenhaver, Jr.
Senior United States District Judge